

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MISSION OF LOVE,

Plaintiff-Appellant,

v

EVANGELIST HUTCHINSON MINISTRIES and  
GEORGE W. HUTCHINSON,

Defendants-Appellees.

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UNPUBLISHED

April 12, 2007

No. 266219

Wayne Circuit Court

LC No. 04-428155-CK

Before: Wilder, P.J., and Sawyer and Davis, JJ.

PER CURIAM.

In this action to quiet title, plaintiff appeals as of right, challenging the trial court's orders denying its motion for contempt, vacating an injunction, and granting defendants' motion for summary disposition. We affirm.<sup>1</sup>

I

The facts relevant to this appeal are undisputed. This dispute concerns property located at 17030 and 17048 Joy Road in Detroit. Plaintiff acquired the property in 1986, subject to an existing mortgage. In July 2004, Darnell Pippen, allegedly acting for plaintiff, conveyed the property to defendant Evangelist Hutchinson Ministries by warranty deed.

Plaintiff filed this suit, entitled complaint for temporary restraining order and to quiet title, in September 2004, alleging that the warranty deed was invalid because Pippen did not have authority to execute it (and that defendants were aware that he lacked authority). In September 2004, the trial court granted an ex-parte temporary restraining order. In October 2004, defendant Evangelist received an assignment of the mortgage on the property. On November 12, 2004, the trial court issued a "permanent injunction" prohibiting the parties from entering, using, modifying, altering, possessing or accessing the premises, or removing personal property from

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<sup>1</sup> Although plaintiff filed its claim of appeal before entry of the trial court's final order, we accept the claim of appeal as timely, given that the defect was cured by the filing of the final order within 21 days of the appeal.

the premises, until further court order. On November 23, 2004, defendants sent a letter to plaintiff notifying it of the mortgage assignment.

In February 2005, defendants commenced proceedings for foreclosure of the mortgage by advertisement under MCL 600.3201 *et seq.*, placing an advertisement in a local newspaper for five consecutive weeks publicizing the foreclosure sale. In March 2005, Evangelist purchased the property at the foreclosure sale, receiving a sheriff's deed.

On September 29, 2005, one day before the redemption period expired, plaintiff filed a motion for contempt and clarification of order, arguing that the foreclosure sale violated the "permanent injunction." Plaintiff argued that: the purpose of the injunction was to maintain the status quo; defendants' conduct (foreclosing on the property) was designed to alter the status quo; and defendants' knowing and intentional violation of the injunction constituted contempt. Plaintiff requested the trial court to abate the redemption period or void the mortgage assignment and foreclosure sale.<sup>2</sup>

After the redemption period expired, the trial court held a hearing on plaintiff's motion. The trial court stated that the permanent injunction was entered to prohibit use or possession of the property, and contained no provision prohibiting foreclosure. Defendants asserted that because they had legal right to the property, the trial court should dissolve the injunction so that they could take possession. The trial court denied plaintiff's contempt motion and dissolved the injunction. The court's order further provided that all monies plaintiff received from the alleged July 2004 sale of the property were to be returned to Evangelist.

Defendants then filed a motion for summary disposition under MCR 2.116(C)(4), (5), or (10). They asserted that plaintiff's lawsuit contended that the deed signed by Pippen was invalid and that plaintiff was estopped from contending otherwise. Defendants further argued that plaintiff had no standing to maintain its suit because the trial court had dissolved the injunction and ordered the sale monies returned on the basis that there was no sale between the parties, and that defendants had legal title to the property, given that the redemption period had expired.

Plaintiff responded that defendants' conduct allowed them to circumvent the equitable jurisdiction of the court and improperly benefit from unclean hands and fraud. It stated that if the warranty deed was valid, then Evangelist's titles merged and extinguished the mortgage, voiding the subsequent foreclosure. Thus, its standing was not vitiated by the foreclosure.

Plaintiff further asserted that equity required that the trial court retain jurisdiction in order to give plaintiff complete relief and set aside the foreclosure proceedings, given the fraud. It also contended that the trial court incorrectly concluded that the redemption period had expired on September 30, 2005, because the redemption period did not begin to run until the deed was recorded on April 14, 2005.

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<sup>2</sup> Plaintiff further argued that if defendants were correct that the warranty deed signed by Pippen was valid, then Evangelist's titles merged upon receiving the mortgage assignment, thereby invalidating the mortgage claim.

The trial court granted defendants' motion. In its November 2005 order, the trial court held that Evangelist "has title to the real property pursuant to and legally described in a Sheriff's Deed . . . and that the redemption period has expired."

## II

### A

#### 1

The first issue is whether the trial court erred in denying the motion for contempt. This Court reviews a trial court's decision regarding a contempt motion for an abuse of discretion. *In re Dudzinski*, 257 Mich App 96, 99; 667 NW2d 68 (2003). But the court's factual findings are reviewed for clear error. *McFerren v B & B Investment Group*, 253 Mich App 517, 522; 655 NW2d 779 (2002). "Clear error exists when the reviewing court is left with a firm and definite conviction that a mistake has been made." *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000).

#### 2

At issue, first, is whether defendants possessed the premises in violation of the injunction. Plaintiff argues that the purpose of the injunction was to maintain the status quo and that defendants' actions changed the status quo and, therefore, violated the injunction. We disagree.

Although the injunctive order is titled "permanent injunction," we agree that it is substantively a preliminary injunction. Courts are not constrained by labels. See *State Treasurer v Abbott*, 468 Mich 143, 152 n 10; 660 NW2d 714 (2003); *Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 539 (1998). A preliminary injunction is entered pending a final hearing on the merits of the case, while a permanent injunction determines the rights of the parties in a final judgment. 10A *Michigan Pleading & Practice* (2<sup>nd</sup> ed), § 76:1, p 775; see also *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212, 219-220; 634 NW2d 692 (2001). Here, the order indicates that it was entered on plaintiff's motion for a preliminary injunction and the order did not determine the parties' rights regarding title to the property. Nor had the contested issue of the validity of the warranty deed been decided. After the order was entered, settlement conferences were scheduled, discovery continued, witness lists were filed, and plaintiff filed a motion for summary disposition. Thus, the injunction is properly characterized as a preliminary injunction.

The purpose of a preliminary injunction is to "preserve the status quo pending a final hearing, enabling the rights of the parties to be determined without injury to either party." *Pharmaceutical Research & Manufacturers of America v Dep't of Community Health*, 254 Mich App 397, 402; 657 NW2d 162 (2002). "The status quo which will be preserved by a preliminary injunction is the last actual, peaceable, noncontested status which preceded the pending controversy." *Fancy v Egrin*, 177 Mich App 714, 720; 442 NW2d 765 (1989).

The term "possession" is not defined in the injunction. Therefore, we look to case law. Generally speaking, "possession" refers to being in actual physical control of the property. See *Anderson v Wiegand*, 223 Mich App 549, 555, 567 NW2d 452 (1997) ("the person in possession

*is in a position of control*” (emphasis added)), citing *Merritt v Nickelson*, 407 Mich 544, 552, 287 NW2d 178 (1980). Here, receiving the assignment of the mortgage did not place Evangelist in a position of actual physical control of the property. Therefore, the trial court did not clearly err in concluding that the receipt of the mortgage assignment did not constitute “possession” in violation of the injunction, and did not abuse its discretion in rejecting plaintiff’s argument seeking to void the mortgage assignment.

Moreover, here the injunction was required because defendants were physically altering the property on account of their belief that Evangelist acquired title by the deed signed by Pippen. At that time, the property was already subject to an existing mortgage and Evangelist merely obtained an assignment thereof (it did not mortgage the property anew). Further, at the time Evangelist received the mortgage assignment, the injunction was not yet in place.<sup>3</sup> Receiving the mortgage assignment could not have violated a yet-to-be-entered injunction.

The next question is whether defendant’s *foreclosure* of the mortgage constituted “possession” in violation of the injunction. We hold that it did not. Foreclosing on a mortgage does not constitute actual physical<sup>4</sup> possession of the premises, because, logically, a foreclosing party is not necessarily in actual physical possession of the land. This distinction (between having a *right* to possess, and actually being in physical possession) is established in both common sense and common law. In *Bauerle v Bd of Co Rd Comm’rs for Charlevoix Co*, 34 Mich App 475, 480-481; 191 NW2d 509 (1971), this Court discussed another case making this distinction:

In *Pleasant Lake Hills Corporation v Eppinger* (1926), 235 Mich 174, 209 NW 152, wherein Defendant contended Plaintiff’s proper remedy was by ejectment instead of trespass, the Supreme Court held that *although Plaintiff held record title to the land around and under the water of the lake or pond, it could not be said it had actual physical possession of the soil*; but neither did the Defendant, and held that the circuit Court in Chancery, under the provisions of CL1915, s 12302(4) had jurisdiction ‘To hear and determine suits instituted by any person claiming the legal or equitable title to lands, whether in possession or not, against any other person not in possession . . . . [Internal quotation marks omitted; emphasis added.]

Foreclosure on a mortgage merely changes the *legal* rights of parties to the land. In other words, receiving a *right* of possession does not necessarily mean there *is* physical possession (i.e., the right to possess is not necessarily exercised). Therefore, the trial court did not clearly err in

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<sup>3</sup> Plaintiff did not seek contempt below for any alleged violation of the ex-parte temporary restraining order.

<sup>4</sup> The “permanent injunction’s” prohibition of possession of the premises could not have meant a prohibition against acquiring mere legal rights in the property (as opposed to physical acts of possession), since before the “permanent injunction” was entered, defendants had already received the assignment of the mortgage.

finding that Evangelist's foreclosure of its mortgage did not constitute "possession" of the property in violation of the injunction.

Moreover, the foreclosure proceedings were conducted independently of any claim of interest under the challenged warranty deed (and the injunction was clearly intended to preserve the status quo with respect to the warranty deed). Notice of the mortgage assignment was given to plaintiff on November 23, 2004, foreclosure proceedings were thereafter conducted by defendants, and Evangelist purchased the property at a foreclosure sale on March 31, 2005. This entire time, plaintiff never objected that defendants' conduct violated the injunction. Rather, it was not until September 29, 2005, that plaintiff filed its motion for contempt, one day before the redemption period expired.

Plaintiff fails to cite authority for the notion that foreclosing on a mortgage constitutes "possessing" the mortgaged property. We find no domestic authority to that effect.

In sum, the "permanent" injunction was not yet in place when the mortgage assignment occurred, and plaintiff did not object to defendants' actions until the day before the redemption period expired. We conclude that the trial court did not clearly err in finding that defendants' conduct (in obtaining the mortgage assignment and then foreclosing thereon) did not constitute "possession," and as a result, the trial court did not abuse its discretion in denying the motion for contempt.

B

1

Plaintiff also argues that the trial court erred in vacating the injunction and granting defendants' summary disposition motion. We disagree. This Court reviews de novo a trial court's equitable rulings to quiet title and its decision on a motion for summary disposition. *Wengel v Wengel*, 270 Mich App 86, 90-91; 714 NW2d 371 (2006).

2

a

Plaintiff argues that the trial court should not have upheld defendants' title, obtained through mortgage foreclosure proceedings, because defendants came to court with unclean hands. The unclean hands doctrine states that *a party seeking the aid of equity* must come to court with clean hands. *McFerren, supra* at 522. Here, however, defendants were not seeking relief in equity. Their title obtained through the mortgage foreclosure was based in law (in a statute). MCL 600.3201 *et seq.* Thus, the unclean hands doctrine is inapplicable.

b

Plaintiff asserts that the trial court was required to address the merits of its fraud claim because of the possibility of merger of title. It argues that if the warranty deed was valid, then Evangelist's titles would have merged upon receiving the mortgage assignment, thus extinguishing the mortgage.

We disagree with plaintiff's argument. On the contrary, defendants are correct that, after title vested in Evangelist pursuant to the foreclosure, it was no longer necessary to resolve the subject matter of plaintiff's lawsuit, i.e., the validity of the warranty deed, because plaintiff no longer had standing. In order to have standing, a party must have "a legal or equitable right, title or interest in the subject matter of the controversy." *MOSES, Inc v Southeast Michigan Council of Gov'ts*, 270 Mich App 401, 414; 716 NW2d 278 (2006) (internal citation omitted). After the redemption period expired, plaintiff no longer had any right or interest in the property, because the property had been validly purchased at a foreclosure sale. At that point, the trial court could not grant plaintiff the relief it sought (title to the property) if it were successful in its suit. Therefore, the trial court did not err in granting defendants' motion for summary disposition and declining to decide the merits of plaintiff's fraud claim. Also, because the facts of the case had changed, making the injunction unnecessary, the trial court properly vacated the injunctive order. *Opal Lake Ass'n v Michaywé Ltd Partnership*, 47 Mich App 354, 367; 209 NW2d 478 (1973).

c

Plaintiff next argues that the trial court erred in refusing to set aside the foreclosure sale and continue its jurisdiction over the case because it had alleged fraud by defendants. We disagree. Any fraud in the inducement of the warranty deed was no longer relevant. It was not related to the foreclosure proceedings, and therefore did not taint the foreclosure sale and resulting sheriff's deed. Defendants obtained a valid mortgage assignment and defendants then followed proper statutory procedure in foreclosing on the property. Plaintiff has failed to show how any fraud associated with the warranty deed tainted the foreclosure proceedings. Because plaintiff does not assert any fraud in the foreclosure proceedings, we reject its argument that the trial court should have set aside the foreclosure sale.

d

Plaintiff also argues that defendants' conduct curtailed its redemption rights because the lawsuit placed a cloud on its title, technically it did not own the property, and, therefore, it could not use the property to raise money to redeem the property. We disagree.

Plaintiff fails to cite authority for its argument. We find no authority providing that where there is litigation over a conveyance of real property, one of the parties to the litigation cannot, by reason of the pending litigation, then acquire a mortgage on the same property and then foreclose on the mortgage, thereby essentially mooting the pending litigation. A court need not decide a moot question. *Ewing v Bolden*, 194 Mich App 95, 104; 486 NW2d 96 (1992).

Moreover, while it is unfortunate for plaintiff that it did not have other collateral or alternative means of obtaining money to *exercise* its redemption rights, the fact that it could not use the disputed property to raise money did not affect its redemption rights. Plaintiff's right to redeem the property remained unaffected.

e

Lastly, plaintiff argues that the trial court prematurely vacated the injunction on October 7, 2005, because the redemption period did not expire until October 14, 2005. The foreclosure

sale took place on March 31, 2005, but plaintiff asserts that the redemption period did not begin until the sheriff's deed was recorded (on April 14, 2005). We disagree.

Plaintiff's position finds no support in the law.<sup>5</sup> MCL 600.3240(7) states that the six-month redemption period runs "from the time of the sale," and MCL 600.3216 provides that the sale "shall be at public sale." Thus, the six-month redemption period began to run on March 31, 2005, the date of the foreclosure sale and, accordingly, expired on September 30, 2005. Cf. *Young v Union Joint Stock Land Bank*, 266 Mich 83, 86-87; 253 NW 225 (1934). Therefore, the trial court did not err in concluding that the redemption period expired on September 30, 2005, and did not err in vacating the injunction on October 7, 2005.

### III

In conclusion, the trial court did not abuse its discretion in denying the motion for contempt, because the trial court did not clearly err in finding that defendants' conduct (in obtaining the mortgage assignment and then foreclosing thereon) did not constitute "possession" of the property, as prohibited by the injunction. The trial court did not err in vacating the injunction and granting summary disposition to defendants, because (a) the unclean hands doctrine did not apply, since Evangelist's title was based in law; (b) after the redemption period expired, plaintiff lacked standing to assert a claim to the property; (c) any fraud in the inducement, unrelated to the mortgage foreclosure, was not relevant to Evangelist's title acquired by foreclosure; (d) the fact that plaintiff could not use the disputed property to raise money to redeem the property did not affect plaintiff's redemption rights; and (e) the trial court did not prematurely vacate the injunction, because the redemption period began with the foreclosure sale.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ David H. Sawyer  
/s/ Alton T. Davis

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<sup>5</sup> Plaintiff's reliance on *Mills v Jirasek*, 267 Mich 609; 255 NW 402 (1934), is misplaced. That case dealt with the validity of a deed where it was not recorded within the time required by statute. Here, the sheriff's deed was timely recorded. MCL 600.3232.